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Attorneys for Plaintiff Innovative
 Nutraceuticals, LLC and the Class

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 EASTERN DIVISION

INNOVATIVE NUTRACEUTICALS,
 LLC, on behalf of itself and all others
 similarly situated,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. CV 5:18-01400-JGB-SHK

FIRST AMENDED CLASS ACTION
 COMPLAINT

5 U.S.C. §701, *et seq.*; 28 U.S.C.
 §1346(a)(2)

[Jury Demand]

Plaintiff INNOVATIVE NUTRACEUTICALS, LLC (“Plaintiff”), on behalf of
 itself and all others similarly situated, hereby files this Class Action Complaint against
 the above-named Defendant, and alleges:

INTRODUCTION

1
2 1. This case is about the unconstitutional conduct of the Defendant United
3 States government in detaining, seizing, summarily forfeiting, and destroying persons'
4 lawfully-owned property without providing them with notice of the detention and seizure
5 of their property, and without affording them an opportunity for a hearing to contest this
6 unlawful conduct.

7 2. Federal forfeiture provides for a detailed notice and claims procedure when
8 Defendant detains and seizes property it claims is related to drugs.

9 3. Defendant, however, has failed and refused to enforce or even apply these
10 procedures when it detains and seizes certain hemp plant materials that are derived from
11 the mature stalks and sterilized seeds of the plant, and are completely lawful, according
12 to federal statutes, rules and regulations.

13 4. Hemp is a source of cannabidiol ("CBD"), a compound that has been
14 effective in treating numerous diseases and has been used in medicine for generations.
15 Hemp is a strain of the cannabis plant, but with markedly different legal status than what
16 is commonly referred to in federal law as "marijuana."

17 5. CBD is one of over 60 compounds found in cannabis that belong to a class
18 of ingredients called cannabinoids. CBD has no psychoactive effects, although it can be
19 found in strains of cannabis that also have significant amounts of tetrahydrocannabinol
20 ("THC"), the ingredient in marijuana that produces mind-altering effects in users.

21 6. CBD, on the other hand, acts as an anti-inflammatory, anticonvulsant,
22 antioxidant, antiemetic, anxiolytic and antipsychotic agent. It is used as a medicine for
23 the treatment of neuroinflammation and certain kinds of chronic pain, epilepsy, diabetes,
24 oxidative injury, vomiting and nausea, panic disorder, obsessive compulsive disorder,
25 post-traumatic stress disorder and schizophrenia. CBD can significantly reduce anxiety,
26 cognitive impairment and discomfort in speech performance.

27 7. Several scientific reports have demonstrated that the use of CBD also can
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1 inhibit the growth of different breast tumor cell lines, can be used to inhibit the invasion
2 of lung and colon cancer, possesses anti-tumor properties in gliomas, and has been used
3 to treat leukemia.

4 8. Seventeen states have approved the use of low THC, high CBD products for
5 medical reasons. Each state has specific requirements and conditions for CBD use, such
6 as patient registry requirements and definitions of products that are allowed

7 9. The federal government has frequently painted the cannabis plant and its
8 component parts with a broad brush of illegality without regard to these nuances. This
9 has led to the federal government, including Customs and Border Protection, improperly
10 and/or erroneously treating all hemp and CBD as illegal.

11 10. Plaintiff obtains crushed hemp plant materials from vendors and produces
12 and markets CBD products from those materials. Plaintiff, along with the class, herein
13 challenges the defendant government's improper detention, seizure, forfeiture and
14 destruction of these lawful materials, which are excluded from the Controlled Substances
15 Act ("CSA"), and Defendant's arbitrary, capricious and inconsistent approach to
16 enforcement of the law.

17 11. While "Marijuana" is classified as a Schedule I substance under the CSA,
18 its definition explicitly exempts specific portions of the plant, and also does not
19 categorize CBD as a Schedule I controlled substance.

20 12. At all times relevant to this case, "marijuana" has been defined in the CSA
21 as: "all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof;
22 the resin extracted from any part of such plant; and every compound, manufacture, salt,
23 derivative, mixture, or preparation of such plant, its seeds or resin. Such term **does not**
24 **include** the mature stalks of such plant, fiber produced from such stalks, oil or cake made
25 from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture,
26 or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or
27 cake, or the sterilized seed of such plant which is incapable of germination." 21 U.S.C.

1 §802(16)(emphasis added).

2 13. Also, the U.S. Ninth Circuit Court of Appeals confirmed that the CSA
3 exempts “non-psychoactive hemp” from the definition of “marijuana.” *Hemp Indus.*
4 *Ass’n v. Drug Enforcement Admin.* (“*Hemp Industries II*”), 333 F.3d 1012, 1013 n.2 (9th
5 Cir. 2003)(“We refer to hemp stalks, fiber, oil and cake made from hemp seed, and
6 sterilized hemp seed itself – i.e., those substances excluded from the definition of
7 marijuana under 21 U.S.C. § 802(16) – as ‘non-psychoactive hemp.’”).

8 14. Plaintiff’s property consisted of crushed hemp stalk and seed materials that
9 were exempted from the definition of marijuana in 21 U.S.C. §802(16), and therefore
10 were legal to purchase, possess and import into the United States.

11 15. Moreover, the fact that these crushed hemp plant materials seized by
12 Defendant may have tested positive for trace amounts of THC did not make them illegal.
13 The Ninth Circuit has determined that naturally occurring THC contained in exempt
14 portions of the marijuana plant does not make them illegal under the CSA. *Hemp*
15 *Industries II*, at 1018.

16 16. Plaintiff and its vendors in Spain disclosed the contents of shipments of
17 hemp to the regulatory authorities in Spain and the United States to ensure that they were
18 lawful and properly delivered.

19 17. Nevertheless, Defendant has unlawfully detained and seized these legal
20 materials, failed to provide notice to Plaintiff and failed to afford Plaintiff the
21 opportunity for a hearing to contest forfeiture as required by 18 U.S.C. §983(a), and
22 instead improperly summarily forfeited and destroyed these lawful materials.

23 18. Although Defendant contends that a federal statute, 21 U.S.C. §881(f),
24 allowed it to unilaterally decide that Plaintiff’s hemp plant materials were not exempted
25 by the CSA, and seize, summarily forfeit and destroy these materials without providing
26 any notice or a hearing, Plaintiff’s hemp plant materials were and are not contraband, and
27 thus the provisions of §881(f) were and are not applicable.

1 26. Defendant United States of America is an entity of the government of the
2 United States of America.

3 **CLASS ACTION ALLEGATIONS**

4 27. This action is properly maintainable as a class action because: a) the class
5 is so numerous that joinder of all members is impracticable, b) there are questions of law
6 or fact common to the class, c) the claims or defenses of the representative party are
7 typical of the claims or defenses of the class, and d) the representative party will fairly
8 and adequately protect the interests of the class, pursuant to the requirements of Federal
9 Rule of Civil Procedure 23(a), and as set forth in detail below.

10 28. The representative Plaintiff brings this action on behalf of itself and as a
11 class action on behalf of the class, defined as follows:

12 **Class A:** All persons and/or entities from whom hemp plant
13 materials exempted by the CSA were detained or seized by the
14 Defendant United States of America, on or during the six years
15 preceding the date of the filing of Plaintiff's original class
16 action Complaint in this case, and said materials have not yet
17 been destroyed or returned to those persons.

18 **Class B:** All persons and/or entities from whom hemp plant
19 materials exempted by the CSA were detained or seized by
20 Defendant, on or during the six years preceding the date of
21 the filing of Plaintiff's original class action Complaint in this
22 case, and said materials were destroyed and not returned to
23 those persons.

24 29. Defendant's actions have affected the property rights of numerous class
25 members throughout the country, making the class so numerous that joinder of all
26 members is impracticable.

27 30. Because the class members may be identified from records regularly
28 maintained by the government and its employees and agents, the number and identity
of the class members can be ascertained through Defendant's own records.

31. The claims and defenses of the class representatives are typical of the class,
in that their property rights were affected by Defendant's above-described improper
conduct, and the representative Plaintiff, like all class members, was similarly harmed

1 by the same systematic and pervasive pattern of conduct engaged in by the government.

2 32. The representative Plaintiff will fairly and adequately represent and protect
3 the interests of the members of the class, and has retained counsel who are competent
4 and experienced in the areas of the Controlled Substances Act, asset forfeiture law,
5 federal civil litigation and class action litigation in federal court. There are no materials
6 conflicts between the claims of the representative Plaintiff and the members of the class
7 that would make class certification inappropriate. Counsel for the class will vigorously
8 assert the claims of all class members.

9 33. This class action is superior to all other methods for the fair and efficient
10 adjudication of this controversy, because joinder of all class members is impracticable.
11 The expense and burden of individual actions also makes it practically impossible for the
12 class members to individually redress the wrongs they have suffered or may suffer or
13 continue to suffer in the future if the above-described conduct continues. There will be
14 no difficulty in managing this case as a class action.

15 34. The following questions of law or fact common to the members of the class
16 predominate over any questions affecting only individual members:

- 17 a. As to all persons or entities whose hemp plant
18 materials are exempted by the CSA, but the
19 materials were detained or seized by Defendant,
20 whether Defendant should be required to
21 preserve and not destroy said materials, and to
22 return the materials to those persons forthwith,
23 and/or to provide notice and a hearing pursuant
24 to 18 U.S.C. §983(a) and due process to those
25 persons regarding the grounds for the seizure;
- 26 b. As to all persons or entities whose hemp plant
27 materials were exempted by the CSA, but the
28 materials were detained, seized and/or destroyed
by Defendant on or after July 2, 2012, whether
the government should pay damages to the
owners of the materials for their losses and costs
resulting from Defendant's conduct.

26 35. This action is properly maintainable as a class action because the prosecution
27 of separate actions by individual members of the class would create a risk of inconsistent
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1 or varying adjudications with respect to individual members of the class, which would
2 establish incompatible standards of conduct for the parties opposing the class.

3 36. This action also is properly maintainable as a class action because the
4 Defendant has acted or refused to act on grounds generally applicable to the class, and
5 such conduct is likely to reoccur against Plaintiff and the class, thereby making
6 appropriate final injunctive relief or corresponding declaratory relief with respect to the
7 class as a whole.

8 37. Because the names and addresses of the class members are in the possession
9 and control of Defendant, and not within Plaintiff's control, notice to the class members
10 should be sent by Defendant.

11 **SPECIFIC ACTS GIVING RISE TO THIS ACTION**

12 **2015 Seizure and Destruction of Plaintiff's Exempt Hemp**

13 38. On November 30, 2015, Plaintiff imported hemp plant materials exempted
14 by the CSA from L&M Natural Hemp in Spain. The materials arrived at Los Angeles
15 International Airport ("LAX") on December 6, 2015, and were seized by the Department
16 of Homeland Security ("DHS").

17 39. The shipment consisted of four packages totaling 31 kilograms of hemp plant
18 materials grown in Spain. The U.S. Department of Customs and Border Protection
19 ("Customs") purportedly tested the shipment and found that it tested positive for CBD.

20 40. Customs seized the crushed hemp plant materials under case
21 #2016-2720-00008901. These materials in the shipment were exempted by the CSA, and
22 CBD is not a Schedule I controlled substance. Accordingly, on October 28, 2016,
23 Plaintiff filed a petition with Customs for administrative review of the seizure.

24 41. Customs did not respond until nearly seven months later, when it denied
25 Plaintiff's petition, stating that after consultation with the DEA, it determined that "CBD
26 is a naturally occurring constituent of marijuana" and thus meets the definition of
27 marijuana under the CSA. It further concluded that "hemp flowers" are not "sterilized
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1 seed” and therefore not excluded from the definition of marijuana. Customs, however,
2 provided no evidence that hemp flowers were contained within the materials, or that CBD
3 is a naturally occurring constituent of marijuana.

4 42. Customs did not provide Plaintiff with the required notice and the
5 opportunity to be heard to contest this determination, but instead stated that “this seizure
6 is no longer subject to the administrative process and will be immediately subject to
7 appropriate disposition.” Plaintiff believes that the government destroyed the hemp
8 materials contained in this shipment.

9 2017 New Jersey Seizure and Destruction of Plaintiff’s Exempt Hemp

10 43. On or about January 25, 2017, in Newark, New Jersey, Defendant seized
11 another shipment from Spain of crushed hemp materials exempted by the CSA.

12 44. On March 3, 2017, after investigating the matter with the carrier and
13 realizing Customs had seized the shipment, Plaintiff e-mailed Customs inquiring why the
14 shipment was seized and about the status (FP&F seizure # 2017460110152901).

15 45. Plaintiff’s inquiry was referred to Customs’ Fines, Penalties & Forfeitures
16 division in Newark, however it was not until April 7, 2017, after several weeks of
17 attempts to make contact with that office, that Plaintiff learned the shipment had been
18 destroyed by Defendant because it allegedly tested positive for marijuana.

19 46. Defendant failed to provide Plaintiff with notice and the opportunity for a
20 hearing to contest the seizure of its property. Defendant instead informed Plaintiff that
21 no notice had to be provided to Plaintiff because of the alleged positive test for marijuana.

22 47. Since the crushed hemp materials in the shipment were exempted by the
23 CSA, Plaintiff asked Defendant for copies of all documents concerning the seizure and
24 destruction of its property, including investigative and lab reports, and requested
25 reimbursement for the destroyed property, to no avail.

26 2017 Los Angeles Detention/Seizure of Plaintiff’s Exempt Hemp

27 48. In late 2017, Plaintiff arranged for a shipment of exempt hemp plant
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1 materials from Natural Hemp in Spain to LAX International Airport, however on or about
2 November 25, 2017, the shipment purportedly was detained by Customs for testing.

3 49. Customs did not provide Plaintiff with notice of this detention, and it was
4 not until about February 1, 2018, that Plaintiff learned from the shipping broker that the
5 shipment had been seized by Customs.

6 50. During the interim months, Plaintiff attempted several times to obtain
7 information about the shipment and to find someone with whom to communicate about
8 the legality of the shipment's contents. Numerous messages were not returned in
9 Plaintiff's futile effort to find a point of contact within Customs.

10 51. Plaintiff eventually learned the shipment was assigned Seizure #2018-2720-
11 00009501, and was informed in a February 26, 2018 email that Customs would not
12 provide Plaintiff with a formal notice of the seizure, and instead, it already had summarily
13 forfeited the materials because unspecified "testing" allegedly revealed the presence of
14 "THC extracts" in the materials.

15 52. Plaintiff immediately notified Customs by email that it intended to contest
16 forfeiture, since the presence of small amounts of THC extracts did not make the
17 materials illegal. Plaintiff further notified Customs not to destroy the materials because
18 it intended to appeal Customs' determination.

19 53. After receiving no response from Customs, on March 8, 2018 Plaintiff sent
20 another email to Customs asking whether the shipment had been destroyed and, if so,
21 when, and also requested a copy of the test results referred to in Customs' email.
22 Customs never responded to Plaintiff's inquiry and Plaintiff believes that its property was
23 destroyed despite its specific request otherwise.

24 2018 Seizure of Plaintiff's Exempt Hemp

25 54. Another shipment of Plaintiff's hemp plant materials exempted by the CSA
26 was seized at the Louisville, Kentucky airport, Customs case #2018-4196-101136701.
27 This shipment was imported from Natural Hemp in Spain, through United Parcel Service.

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1 55. On or about March 14, 2018, this shipment, for which the UPS Import
2 Shipment Detail stated contained 50 kilograms of crushed hemp plant materials grown
3 in Spain, was intercepted by Defendant

4 56. Customs purportedly tested the shipment and found it positive for trace
5 amounts of THC.

6 57. Nevertheless, Customs agreed not to destroy the materials, and on April 17,
7 2018 Plaintiff filed an administrative petition seeking return of the shipment and its
8 preservation for further testing.

9 58. On June 20, 2018, Customs responded that the shipment “may be” released
10 to Plaintiff, but on the condition that Plaintiff a) submit a notarized “Hold Harmless
11 Agreement” agreeing not to sue Customs for its damages relating to this improper seizure,
12 and b) either pay for the government’s private storage contractor’s delivery fees for the
13 return of its shipment or incur its own costs to pick up the shipment from the contractor
14 in Dayton, New Jersey.

15 59. Although Plaintiff eventually obtained return of its exempt hemp plant
16 materials, it incurred substantial costs due to Defendant’s unlawful seizure.

17 **CLAIMS OF OTHER PERSONS SIMILARLY SITUATED**

18 60. Plaintiff is informed and believes that Defendant, throughout the United
19 States of America and its territories, has detained, seized, summarily forfeited and
20 destroyed hemp plant materials exempted by the CSA owned by numerous class members.
21 The harms suffered by Plaintiff and the class members are directly traceable to
22 Defendant’s inaccurate determinations and factual conclusions regarding the exempt
23 status of the hemp plant materials.

24 **FIRST CAUSE OF ACTION**

25 **(Administrative Procedures Act, 5 U.S.C. §701 *et seq.*)**

26 **For an Injunction and/or Declaratory Relief**
27 **ordering Defendant not to summarily forfeit**

1 **or destroy seized hemp plant materials,**
2 **and to return them while this case is pending)**

3 61. Plaintiff herein incorporates by reference the acts and omissions described
4 in Paragraphs 1-60, above.

5 62. Because of the above-mentioned acts and omissions, Defendant has violated
6 the rights of Plaintiff, and the rights of all other persons similarly situated, by improperly
7 detaining and seizing hemp plant materials exempted by the CSA, and then summarily
8 forfeiting and destroying them, without providing notice or a hearing to Plaintiff or the
9 class members, in violation of 18 U.S.C. §983(a) and the U.S. Constitution, Fifth
10 Amendment Due Process Clause.

11 63. Because of these aforementioned acts, and pursuant to the Administrative
12 Procedures Act, 5 U.S.C. §701 *et seq.*, Defendant has acted and/or failed to act in its
13 official capacity and/or under legal authority, and thus should be ordered not to
14 summarily forfeit or destroy any seized hemp plant materials while this case is pending,
15 and to return said materials.

16 **SECOND CAUSE OF ACTION**

17 **(28 U.S.C. §1346(a)(2); for damages for the**
18 **destruction of exempt hemp plant materials)**

19 64. Plaintiff herein incorporates by reference the acts and omissions described
20 in Paragraphs 1-60, above.

21 65. Because of the above-mentioned acts and omissions, Defendant has violated
22 the rights of Plaintiff, and the rights of all other persons similarly situated, by detaining,
23 seizing, summarily forfeiting and/or destroying exempt hemp plant materials without
24 providing notice and the opportunity for a hearing, in violation of 18 U.S.C. §983(a) and
25 the Fifth Amendment Due Process Clause of the United States Constitution.

26 66. Because of these aforementioned acts, and pursuant to 28 U.S.C. §1346(a)(2)
27 and 18 U.S.C. §983(a), this Court has jurisdiction over suits seeking damages for
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1 unlawful forfeitures. *See also, e.g., Wiren v. Eide*, 542 F.2d 757, 760 (9th Cir.1976);
2 *Simons v. United States*, 497 F.2d 1046, 1049–50 (9th Cir.1974); and *Baker v. United*
3 *States*, 722 F.2d 517, 518 (9th Cir. 1983).

4 67. Accordingly, Defendant should be ordered to pay damages to Plaintiff in an
5 amount not to exceed \$10,000 for each of the four seizures/claims described in ¶¶38-59
6 above, and to pay damages to similarly situated class members in amount not to exceed
7 \$10,000 for each such claim/seizure.

8 **BASIS FOR DECLARATORY AND INJUNCTIVE RELIEF**

9 68. An actual controversy has arisen and now exists between Plaintiff and
10 Defendant in that Plaintiff contends, and Defendant denies, that notice and an opportunity
11 for a timely hearing to contest the government’s conduct must be provided pursuant to 18
12 U.S.C. §983(a), and that the seized exempt hemp plant materials must be returned and not
13 destroyed.

14 69. Beginning six years before the date of the filing of the initial Complaint, and
15 continuing to the present time, Defendant has unlawfully and wrongfully detained, seized,
16 forfeited and/or destroyed the property of the representative Plaintiff and the class
17 members, and failed to provide prompt notice and the opportunity for a timely hearing to
18 contest this conduct as mandated by federal civil forfeiture and constitutional law.
19 Defendant also has failed and refused to return and has destroyed the property that was
20 detained, seized and/or forfeited in violation of federal law.

21 70. Defendant’s wrongful conduct, unless and until enjoined and restrained by
22 order of this Court, will cause great and irreparable harm, in that Defendant will continue
23 to wrongfully deprive class members of their property.

24 71. Plaintiff and class members have no adequate remedy at law for the harm that
25 has been inflicted and that continues to be threatened, in that Defendants does not provide
26 for or offer an adequate federal administrative and/or judicial statutory remedy for
27 aggrieved persons to protect and obtain return of their property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and all others similarly situated, pray for the following relief:

- a. That the Court certify this action as a class action;
- b. That judgment be entered on behalf of Plaintiff and all class members and against Defendant as requested herein;
- c. That Plaintiff and all class members be awarded their costs and reasonable attorneys' fees in this action, pursuant to 28 U.S.C. §2412, or as otherwise authorized by law and/or equity;
- d. For a trial by jury; and
- e. All other necessary, proper and appropriate legal and equitable relief.

Dated: April 12, 2019

Respectfully submitted,

LAW OFFICE OF ERIC HONIG
A Professional Law Corporation

PAUL L. GABBERT

CHERNIS LAW GROUP P.C.

/s/ Eric Honig

ERIC HONIG
Attorneys for Plaintiff and the Class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all claims and causes of action for which it is entitled to a jury trial.

Dated: April 12, 2019

Respectfully submitted,

LAW OFFICE OF ERIC HONIG
A Professional Law Corporation

PAUL L. GABBERT

CHERNIS LAW GROUP P.C.

/s/ Eric Honig

ERIC HONIG
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